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**Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**
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Item 3 of the provisional agenda*
**Finalization and approval of the additional international legal instrument against trafficking in persons, especially women and children**

# Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

*The States Parties to this Protocol,*

*Taking note* of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"),

*Gravely concerned* by the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in persons,

*Believing* that women and children are particularly vulnerable to and targeted by transnational criminal organizations engaged in trafficking in persons,

*Declaring* that effective action to combat international trafficking in persons, especially women and children, requires a comprehensive, international approach in the countries of origin, transit and destination that includes measures to prevent such international trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

*Taking into account* the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the sexual exploitation of women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

*Concerned* that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

* A/AC.254/35.

*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

*Convinced* that supplementing the Convention with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in combating that crime,

*Taking into account* the provisions of the Convention,[1]

*Have agreed as follows*:

# I. Purpose, scope and criminal sanctions

*Article 1*
*Purposes*[2]

The purposes of this Protocol are:

(a) To prevent and combat [international][3] trafficking in persons, paying particular attention to the protection of women and children;[4] and

(b) To promote and facilitate cooperation among States Parties in order to meet this objective.[5]

[1] Two delegations noted that the draft Protocol should also take into account recent and ongoing work in other international forums (i.e. the work in connection with the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted on 17 June 1999 by the General Conference of the International Labour Organization (ILO) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (General Assembly resolution 54/263, annex II). Two other delegations suggested that reference should be made to relevant conventions in the preamble to the draft Protocol.

[2] At the ninth session of the Ad Hoc Committee, this text was agreed subject to the outcome of the bracketed word "international" (see the footnotes below). It was restructured in order to indicate that the purposes referred to in subparagraphs (a) and (b) were equally important. Several delegations suggested including an additional subparagraph to deal with the protection of victims. The parallel text, contained in article 3, subparagraph (c), of the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (the "Migrants Protocol") (A/AC.254/4/Add.1/Rev.5), states (in brackets): "To promote international cooperation in the interests of the protection of the victims of such trafficking and respect for their human rights".

[3] At the informal consultations held during the seventh and ninth sessions of the Ad Hoc Committee, discussion of whether to include the word "international" was deferred pending finalization of the corresponding provisions in the draft Convention.

[4] At the ninth session of the Ad Hoc Committee, there was general agreement to delete the words ", who are so often the victims of such trafficking" after the words "women and children".

[5] At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations suggested that this article should distinguish between the purposes of this Protocol and the Migrants Protocol. One delegation suggested adding the words "all forms of exploitation".

*Article 2*
*Scope of application*

This Protocol shall, except as otherwise provided herein, apply to the prevention and combating, as well as the protection of victims of [international][6] trafficking in persons as defined in article 2 *bis* of this Protocol and[, when involving an organized criminal group,][7] as defined in article [...] of the Convention.

*Article 2 bis*
*Definitions*[8]

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of force, by abduction, fraud, deception, [inducement,][9] coercion or the abuse of power or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation[, irrespective of the consent of the person];[10]

[6] At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on inserting the word "international" in brackets in this paragraph. Many delegations were in favour of inserting the word in order to bring the scope of this draft Protocol in line with that of the draft Convention. However, some delegations expressed the view that the Protocol should protect all persons and that the inclusion of the word would make its scope too limited. Several delegations also expressed the view that the term "international trafficking" should be defined in order to clarify what situations would be covered under the Protocol. At the informal consultations held during the seventh session of the Ad Hoc Committee, a similar discussion ensued. At the ninth session of the Ad Hoc Committee, there was general agreement to defer further discussion until corresponding provisions of the draft Convention had been finalized.

[7] At the informal consultations held during the seventh session and at the ninth session of the Ad Hoc Committee, there was general agreement to defer discussion of the words in brackets pending finalization of the corresponding provisions in the draft Convention.

[8] At the ninth session of the Ad Hoc Committee, there was consensus that the three previous options for this article should be replaced with this text, which is a consolidation of options 2 and 3 prepared by an informal working group (see A/AC.254/L.205 and A/AC.254/4/Add.3/Rev.6).

[9] At the ninth session of the Ad Hoc Committee, extensive discussion took place regarding the inclusion of the word "inducement".

[10] At the ninth session of the Ad Hoc Committee, there was extensive discussion of whether a reference to the consent of the victims should be made in the definition of "trafficking in persons" and, if so, how it should be worded. Most delegations agreed that the consent of the victim should not, as a question of fact, be relevant to whether the victim had been "trafficked". However, many delegations expressed legal concerns about the effect of expressly excluding consent from a provision in which many of the means listed, by their nature, precluded the consent of the victim. Several expressed concern that an express reference to consent might actually imply that in some circumstances it would be possible to consent to such things as the use or threat of force, or fraud. Several delegations pointed out that proving lack of consent was difficult because the victim's consent or ability to consent often changed while the offence was ongoing. In trafficking cases, the initial consent of the victim was often withdrawn or vitiated by subsequent changes in circumstance and, in some cases, a victim abducted without consent might subsequently consent to other elements of the trafficking. There was agreement that both the Protocol and legislation implementing it should reduce this problem for prosecutors and victims as much as possible. At the ninth session of the Ad Hoc Committee, no consensus was reached on the words "irrespective of the consent of the person" and the Chairperson asked delegations to consider the following options:

(a) The deletion of the words "irrespective of the consent of the person"; their replacement with a new subparagraph (a *ter*), proposed by the Chairperson (worded as follows: "The existence of any of the means set forth in subparagraph (a) of this article shall be considered as vitiating any alleged consent of a victim of trafficking"); and inserting in subparagraph (a) the words "by means of the threat or use of force" to clarify which "means" were referred to in new subparagraph (a *ter*);

exploitation shall include, at a minimum, [the exploitation of the prostitution of others or other forms of] sexual exploitation,[11] forced labour or services, slavery or practices similar to slavery, [the removal of organs for illicit purposes][12] [or servitude];[13, 14]

[(b) When referring to a child, the conduct set forth above shall be considered "trafficking in persons" even if threat or use of force, abduction, fraud, deception, coercion, abuse of power or the consent of a person having control over the child are not involved;]

[(c) "Servitude" shall mean the condition of a person who is unlawfully compelled or coerced by another to render any service to the same person or to others and who has no reasonable alternative but to perform the service, and shall include domestic servitude and debt bondage;]

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(b) A proposal by Spain to amend the bracketed text to read "irrespective of the initial consent of the victim";

(c) A proposal by Colombia to move the bracketed text from this provision to paragraph 1 of article 3 (Obligation to criminalize);

(d) A proposal by Argentina to replace the article with the following text (originally submitted in Spanish):

"(...) For the purpose of this Protocol, 'trafficking in persons' shall mean their transfer under any circumstances, with or without their consent, for purposes of exploitation;

"(...) 'Exploitation' shall mean reduction to servitude, subjection to prostitution, slavery, forced labour or child pornography;

"(...) States Parties may take into account other forms of 'exploitation', in accordance with their domestic legal systems."

[11] At the ninth session of the Ad Hoc Committee, the bracketed text was included at the proposal of the delegation of Mexico for purposes of further discussion. At the request of one delegation, the Chairperson clarified that "exploitation" in this phrase distinguished between individuals who might derive some benefit from their own prostitution and those who derived some benefit from the prostitution of others. Two delegations requested that previous language be referred to in a footnote for further consideration. The wording proposed by the informal working group that produced the text at the ninth session, as a compromise, was "use in prostitution" (see A/AC.254/L.205).

[12] At the ninth session of the Ad Hoc Committee, several of the delegations that supported listing forms of "exploitation" requested that such a list include the removal of or trafficking in human organs, tissues or body parts and it was decided to include such a reference for purposes of further discussion. The wording was proposed by the Chairperson. Also proposed were the words "illicit removal of organs", "transfer of organs of persons for profit" and "trafficking in organs" and expanding the wording to include "other body parts". One delegation noted that, while trafficking in persons for the purpose of removing organs was within the mandate of the Ad Hoc Committee, any subsequent trafficking in such organs or tissues might not be. Another delegation noted that dealing with organ trafficking as such might make it necessary to develop additional measures, since the other provisions of the draft Protocol dealt with trafficking in persons and not organs.

[13] At the ninth session of the Ad Hoc Committee, most delegations favoured including the reference to "servitude". Those opposed to the inclusion cited a lack of clarity as to the meaning of the term and duplication with the reference to "slavery or practices similar to slavery". It was also noted that, if the word "servitude" were to be deleted from this subparagraph, the definition of "servitude" in subparagraph (c) should also be deleted.

[14] At the ninth session of the Ad Hoc Committee, there was discussion of whether this provision should attempt to list specific forms of exploitation. A number of specific forms of exploitation were suggested and some delegations requested that those forms be listed in a footnote for possible inclusion in the *travaux préparatoires*. The suggested forms of exploitation included the illicit removal of organs or other body parts or tissues, forced marriage, forced adoption, the purchase or sale of children and the making or distribution of child pornography. Whereas some delegations favoured listing them, others favoured the words "at a minimum" to ensure that unnamed or new forms of exploitation would not be excluded by implication.

(d) "Child" shall mean any person under eighteen years of age.

*Article 3*
*Obligation to criminalize*[15]

1. States Parties shall adopt such measures as may be necessary to establish as criminal offences under their domestic law[16] the conduct set forth in article 2 *bis* of this Protocol and shall impose penalties that take into account the grave nature of those offences.

2. States Parties shall also adopt such measures as may be necessary to establish as criminal offences under their domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:[17]

(a) Attempting to commit an offence set forth in article 2 *bis* of this Protocol; and

(b) Participating as an accomplice in organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in article 2 *bis* of this Protocol.[18]

3. The knowledge, intent or purpose required to commit an offence set forth in article 2 *bis* of this Protocol may be inferred from objective factual circumstances.[19]

[15] At the fourth session of the Ad Hoc Committee, several delegations suggested that this article should be consistent with the relevant articles of the draft Convention and in the draft Migrants Protocol.

[16] At the ninth session of the Ad Hoc Committee, the delegation of Colombia proposed that the words "irrespective of the consent of the person" be deleted from subparagraph (a) of article 2 *bis* and that the words ", irrespective of the consent of the victim," be inserted after the words "domestic law" in this article.

[17] At the ninth session of the Ad Hoc Committee, some delegations proposed inserting the words "when committed intentionally" in paragraph 1 or 2 or both.

[18] At the ninth session of the Ad Hoc Committee, there was general agreement to replace former subparagraphs (c) and (d) of this article with a merged text consistent with article 3, paragraph 1 (b), of the revised draft Convention and to add the words "participating as an accomplice in". There was also general agreement to delete subparagraph (d) on the basis that article 3, paragraph 1 (a), of the Convention would apply to the Protocol, *mutatis mutandis*.

[19] At the fourth session of the Ad Hoc Committee, some delegations suggested that this subparagraph should be deleted, while others stated that it should be retained as the wording was used in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

# II. Protection of trafficked persons

*Article 4*[20, 21]

*Assistance for and protection of victims of trafficking in persons*[22]

1. In appropriate cases and to the extent possible under domestic law, States Parties shall protect the privacy and identity of victims of crimes[23] covered by this Protocol, including, *inter alia*, by making legal proceedings relating to trafficking in persons confidential.[24]

2. States Parties shall ensure that their legislative or administrative frameworks contain measures that provide to victims of crimes covered by this Protocol, in appropriate cases:

(a) Information on the relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence.

3. [In appropriate cases and to the extent possible, States Parties shall consider implementing measures to provide for the physical and psychological recovery of victims covered by this Protocol and, in particular:][25]

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[20] At the ninth session of the Ad Hoc Committee, the text of article 4, paragraphs 1, 2 and 6, was agreed with the changes noted, paragraphs 4 and 5 were agreed without changes and paragraph 3 was not agreed.

[21] At the ninth session of the Ad Hoc Committee, several delegations suggested including the words "and witnesses" after the word "victims", noting that witnesses as well as victims were often placed in fear of their lives. A majority of delegations expressed the view that article 18 of the draft Convention, entitled "Protection of witnesses", addressed the concerns of those delegations and that article 18 should apply *mutatis mutandis* to this Protocol, where appropriate.

[22] Article 4 in document A/AC.254/4/Add.3, dealing with victims, was expanded into four separate articles (articles 4-7) in the version contained in document A/AC.254/4/Add.3/Rev.4, each addressing a different aspect of victim assistance. At the fourth session of the Ad Hoc Committee, some delegations reiterated their commitment to maintain a balance between providing protection and assistance for trafficked persons on the one hand and law enforcement on the other.

[23] At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations proposed that the words "victims" and "victims of crimes covered by this Protocol" appearing in various places in the text be replaced with the words "trafficked persons". One delegation noted that the word "victims" might be interpreted as a reference to persons having the legal status of victims, whereas the term "trafficked persons" was broader and more inclusive.

[24] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that the words "in appropriate cases and to the extent possible" should be retained without brackets and that the words "making legal proceedings relating to trafficking in persons confidential" should be inserted at the end of the sentence to emphasize that open public legal proceedings were the norm but that confidentiality should be applied to protect victims in appropriate cases. At the ninth session of the Ad Hoc Committee, there was general agreement to retain the words "and identity" without brackets and to add the words "including, *inter alia*," referring to confidential legal proceedings.

[25] At the ninth session of the Ad Hoc Committee, there was extensive discussion about the extent to which the chapeau of this paragraph should make implementation of the provisions of the paragraph mandatory or discretionary on the part of States Parties. Consensus could not be reached and as a result this portion of the text was placed in square brackets for further consideration by delegations. The Chairperson asked that delegations reflect on their positions, noting that there had been extensive discussions of article 4 at the informal consultations held during the previous session and that a compromise—in which some obligations had been put under the mandatory language of paragraphs 1, 2 and 6, while others had been given a greater measure of flexibility under the other paragraphs—had only been reached with considerable effort and compromise at that time. The Chairperson and several delegations also noted that, as the obligations of the

(a) Appropriate housing;

(b) Counselling and information, in a language that the trafficked persons can understand, in particular as regards their legal rights;

(c) Medical, psychological and economic assistance; and

(d) Employment, educational and training opportunities.[26]

4. States Parties shall take into account, in applying the provisions of this article, the special requirements of children, including appropriate housing, education and care.

5. States Parties shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within their territories.

6. States Parties shall ensure that their legal frameworks provide for measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

*Article 5*

*Status[27] of the victim in the receiving State*

1. In addition to measures provided pursuant to article 4 of this Protocol, States Parties shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in their territories, temporarily or permanently, in appropriate cases.[28]

2. In implementing the provision contained in paragraph 1 of this article, States Parties shall give appropriate consideration to humanitarian and compassionate factors.[29]

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various paragraphs applied to all States Parties, countries from which victims were trafficked and countries to which they were trafficked would be equally obliged to provide the various support measures. Several attempts at compromise were proposed. The delegation of Mexico suggested that the words "in appropriate cases and to the extent possible" should be placed after the word "implementing" in order to clarify that the phrase qualified "implementing" and not "consider". The delegation of Bangladesh proposed that the word "consider" be deleted if the words "in appropriate cases and to the extent possible" were to be retained. The Chairperson and several delegations also proposed the words "shall endeavour to implement" or "shall make their best efforts to implement".

[26] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that subparagraphs (a) and (b), which were subparagraphs (c) and (d) of article 2 in the previous text (A/AC.254/4/Add.3/Rev.5), should be incorporated into a separate paragraph of a non-obligatory nature and that further amendments should be included as new subparagraphs (c) and (d). Some delegations suggested that a reference to essential medical care should be made in paragraph 2, the obligatory provision.

[27] At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations expressed a preference for using the word "status" rather than the word "situation" in the title of this article.

[28] At its ninth session, the Ad Hoc Committee agreed on the text of this paragraph, retaining the word "consider" without brackets, provided that some concerns were noted. Most delegations were concerned that the Protocol might inadvertently become a means of illicit migration if States Parties were obliged to adopt legislation permitting victims to remain in the countries to which they were trafficked. There was general agreement, however, that there was a legitimate need for victims to remain in some cases for humanitarian purposes and to protect them from being victimized again by traffickers and that countries should take this into consideration. Several delegations voiced particular concern about the immediate repatriation of victims of trafficking.

[29] At the informal consultations held during the seventh session of the Ad Hoc Committee, Canada, supported by many delegations, expressed the view that the words "compassionate factors" meant personal circumstances such as family situation, age, common-law marital relationship and other factors that should

*[Article 5 bis was deleted.]*[30]

*Article 6*

*Repatriation*[31] *of victims*[32] *of trafficking in persons*

1. The State of which a victim of trafficking in persons is a national or in which the person had[33] the right of permanent residence[34] at the time of entry into the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or had, at the time of entry into the receiving State, the right of permanent residence, such return shall be with due regard for the safety of that person, as well as the status of any legal proceedings related to the fact that the person is a victim of trafficking [and, as far as possible, voluntary].[35]

3. The provisions of this article shall be without prejudice to any right afforded to the victim by any domestic law of the receiving State.[36]

4. At the request of a State Party that is the receiving State, each State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of such

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be considered on an individual and case-by-case basis. "Humanitarian factors", on the other hand, were the rights established in the human rights instruments and were applicable to all persons. At the ninth session of the Ad Hoc Committee, this paragraph was agreed.

[30] At the ninth session of the Ad Hoc Committee, there was general agreement to delete article 5 *bis*, entitled "Seizure and confiscation of gains". It was agreed that the seizure and forfeiture scheme in articles 7, 7 *bis* and 7 *ter* of the draft Convention should apply *mutatis mutandis* to the Protocol and that these covered most of the same content. It was decided not to retain text calling for use of seized proceeds to defray the cost of assistance to victims because this was not consistent with compromises reached in negotiating the scheme in the draft Convention and because it faced practical and legal implementation problems in many States.

[31] At the fourth session of the Ad Hoc Committee, a majority of delegations suggested replacing the word "return" with the word "repatriation".

[32] At the fourth session of the Ad Hoc Committee, some delegations suggested that the word "victims" should be replaced with the words "trafficked persons".

[33] Following discussion at the ninth session of the Ad Hoc Committee, it was agreed to use the past tense ("had") in paragraphs 1 and 2 of this article. Several delegations pointed out that if repatriation depended on rights of residence or abode at the time of repatriation, it would be open to receiving States to block repatriation by revoking the residency status or citizenship of trafficking victims.

[34] The meaning of the words "right of abode" was discussed at several sessions of the Ad Hoc Committee. In response to concerns, one delegation clarified that this included rights of ongoing or permanent residence, but did not include fixed-term or temporary status, such as that often granted to students, temporary workers or visitors. It was agreed that language equivalent to "permanent residence" or "permanent abode" was needed for equal clarity in all languages. It was also decided to make the same change wherever references to rights of residence or abode appeared in the text. The delegation of Germany expressed concern that this was overly restrictive and noted that it did, in some cases, repatriate people to countries in which they may have had or had had only temporary residence. In this regard, it reserved the right to seek the cooperation of other States for such repatriations and to interpret the wording of this provision as not restricting its right to do so.

[35] At the ninth session of the Ad Hoc Committee, a majority of delegations expressed the view that the words "as far as possible, voluntary" should be deleted, but several wanted to retain them.

[36] At the ninth session of the Ad Hoc Committee, paragraphs 1, 2 and 3 were agreed based on the Chairperson's proposal (see A/AC.254/L.206), as amended.

trafficking is a national of the requested State Party or had the right of permanent residence in the requested State Party at the time of entry into the receiving State Party.[37]

[*Former paragraph 3 was moved to article 9 bis.*]

5. In order to facilitate the return of victims of such trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of permanent residence at the time of entry into the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory.[38, 39]

# III. Prevention, cooperation and other measures

*Article 7*[40]

*Information and training measures for law enforcement*[41]

1. Law enforcement authorities[42] of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law,[43] to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of documentation that individuals have used or attempted[44] to use to cross an international border for the purpose of trafficking in persons;[45] and

[37] At the ninth session of the Ad Hoc Committee, there was general agreement to retain the words "undue or unreasonable" without brackets. The words "or had the right of permanent residence in the requested State Party at the time of entry" were added and the text was agreed.

[38] At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested that receiving States Parties should verify the nationality claimed by victims before proceeding with the repatriation of such victims.

[39] At the fourth session of the Ad Hoc Committee, China suggested adding the following new paragraph after paragraph 4 of this article: "(...) The receiving State of victims of trafficking shall provide necessary facilities for the return of victims." At the informal consultations held during the seventh session of the Ad Hoc Committee, several delegations opposed the proposal, stating that the allocation of costs was best left to the States Parties involved. One delegation suggested adding, as an alternative, the following sentence: "States Parties shall conclude agreements determining the means of implementing this article."

[40] At the ninth session of the Ad Hoc Committee, the entire text of article 7 was agreed.

[41] At the ninth session of the Ad Hoc Committee, the title was agreed, subject to review of the words "law enforcement" in conjunction with the preparation of a glossary of terms.

[42] At the ninth session of the Ad Hoc Committee, several delegations expressed concern regarding the translation of the words "law enforcement authorities" into the other official languages of the United Nations and the inconsistency in the way the term was used throughout the text of the draft Convention and the draft Protocols. It was agreed that the matter should be resolved when the Ad Hoc Committee reviewed the glossary of terms.

[43] At the ninth session of the Ad Hoc Committee, there was general agreement to insert the words "in accordance with their domestic law".

[44] The translation of the word "attempt" into Arabic will be reviewed in conjunction with the preparation of a glossary of terms.

[45] At the ninth session of the Ad Hoc Committee, there was a lengthy discussion about whether to refer to exchanging information about the misuse of "valid" travel documents as well as altered or falsified ones. As a compromise, this text was agreed.

(c) The methods and means used by organized criminal groups for trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and the possible measures for detecting them.[46]

2. States Parties shall provide or strengthen training to prevent trafficking in persons for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights, and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.[47]

*Article 8*[48]
*Border measures*[49]

1. Without prejudice to international commitments for the free movement of people, States Parties shall strengthen, to the extent possible, border controls as may be necessary to detect and prevent trafficking in persons, including by checking [persons'][50] travel or identity documents and, where appropriate, by boarding and inspecting vehicles and vessels, [with due respect for human rights].[51, 52]

2. States Parties shall[53] take legislative or other appropriate measures to prevent means of transport operated by commercial carriers[54] from being used in the commission of offences covered by article 3 of this Protocol.[55]

3. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial

[46] This text was agreed at the ninth session of the Ad Hoc Committee, based on former subparagraphs (c) and (d), with amendments. One delegation further proposed a reference to language training.

[47] At the ninth session of the Ad Hoc Committee, paragraph 2 was agreed, with several amendments. The reference to "human rights, child-sensitive and gender-sensitive training" was added and the reference to non-governmental organizations and civil society was made consistent with the wording of article 10, paragraph 3.

[48] This article is based on the text proposed by the informal working group convened at the request of the Chairperson during the sixth session of the Ad Hoc Committee (see A/AC.254/L.110).

[49] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using "Border measures" as the title of this article.

[50] At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations suggested deleting the word "persons'" in order to alleviate some of the concern expressed regarding possible human rights violations during the checking process.

[51] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on adopting the text proposed by Mexico, amending option 2 of the previous text, which had been proposed by the European Union (see A/AC.254/4/Add.3/Rev.5).

[52] At the informal consultations held during the seventh session of the Ad Hoc Committee, several delegations expressed the view that human rights issues were covered under article 13. Belgium, supported by several delegations, suggested that paragraph 1 should state that it would be without prejudice to article 5 on the status of the victim in the receiving State.

[53] At the sixth session of the Ad Hoc Committee, some delegations proposed that this provision not be obligatory.

[54] At the sixth session of the Ad Hoc Committee, some delegations expressed concern about placing obligations on common carriers. Several delegations suggested that tourist organizations and other related travel agencies should be included in this paragraph.

[55] Paragraphs 2-4 were proposed by France and the United States of America (see A/AC.254/L.107) at the sixth session of the Ad Hoc Committee.

carriers, including any transportation company or the owner or operator of any vessel or vehicle, ascertain that all passengers travelling by land,[56] air or sea have a valid[57] passport and visa,[58] if required, or any other documentation necessary for legal[59] entry into the receiving State.

4. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for sanctions[60] in cases of violation of the obligation set out in paragraph 3 of this article.[61, 62]

5. States Parties shall consider adopting measures that permit, in conformity with their domestic law,[63] the denial of entry or revocation of visas[64] of persons[65] implicated[66] in crimes covered by this Protocol.

*Article 9*
*International travel documents*

1. States Parties shall adopt such measures as may be necessary, in accordance with available means, to ensure that travel or identity documents issued by them are of such quality that they cannot be easily misused and cannot readily be unlawfully altered, replicated[, falsified] or issued.[67]

[56] At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations preferred to use the word "land" to include all forms of land transportation, including rail. A few delegations expressed concern about the feasibility of requiring rail operators to check documents, because many routes included both domestic and international stops.

[57] At the sixth session of the Ad Hoc Committee, many delegations expressed concern that common carriers had no resources or expertise to ascertain the authenticity of the documents (i.e. whether they have been forged or falsified). There was general agreement that using the word "valid" would require common carriers to check only for obvious defects on the surface of the documents, such as documents that were blank or had expired.

[58] At the sixth session of the Ad Hoc Committee, several delegations suggested changing the words "passport and visa" to the words "travel documents".

[59] At the sixth and seventh sessions of the Ad Hoc Committee, some delegations suggested deleting the word "legal".

[60] At the sixth session of the Ad Hoc Committee, consensus was reached on replacing the word "penalties" with the word "sanction".

[61] At the sixth session of the Ad Hoc Committee, Argentina suggested incorporating a provision on cooperation mechanisms (A/AC.254/L.99).

[62] At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations suggested deleting reference to specific sanctions in the previous text (see A/AC.254/4/Add.3/Rev.5). Some delegations opposed such a deletion. Some delegations suggested that a reference to imprisonment should be made in this paragraph.

[63] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using the words "in conformity with their domestic law" rather than the words "in appropriate cases".

[64] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on substituting the words "denial of entry or revocation of visas" for the previous text (see A/AC.254/4/Add.3/Rev.5).

[65] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on deleting the reference to foreign officials.

[66] At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using the word "implicated". Two delegations were in favour of using the words "confirmed to be implicated", but a majority of the delegations opposed that proposal.

[67] The changes to this paragraph were taken from article 12, paragraph 1, of the draft Migrants Protocol as agreed at the sixth session of the Ad Hoc Committee (A/AC.254/L.128/Add.2).

2. States Parties shall adopt such measures as may be necessary to ensure the integrity and to control the lawful creation, issuance, verification, use and recognition of travel or identity documents issued by or on behalf of the States Parties.[68]

*Article 9 bis*
*[Untitled]*

States Parties shall, at the request of another State Party and in accordance with the domestic law of the requested State Party, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of the requested State Party and suspected of being used for trafficking in persons.[69]

*Article 10*[70]
*Prevention of trafficking in persons*

1. States Parties shall [endeavour to][71] establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect trafficked persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake[, as appropriate,][72] measures such as research, information and mass media campaigns and social and economic initiatives to prevent [and combat][73] trafficking in persons.[74]

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[68] The changes to this paragraph were taken from article 12, paragraph 2, of the draft Migrants Protocol as agreed at the sixth session of the Ad Hoc Committee. Following the discussion of this paragraph, an informal working group on the draft Migrants Protocol submitted further changes, which have been incorporated into the text of that Protocol, pursuant to the instruction of the Chairperson. The proposal now reads:

"States Parties shall adopt such measures as may be necessary, in accordance with available means:

"(a) To ensure that travel or identity documents issued by them are of such quality that they cannot be easily misused and cannot readily be unlawfully altered, replicated, falsified or issued; and

"(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the States Parties and to prevent their unlawful creation, issuance and use."

[69] At its sixth session, the Ad Hoc Committee decided to use the text of article 13 of the revised draft Protocol as amended during that session (see A/AC.254/L.128/Add.2) as the basis for further discussion. Originally, this paragraph appeared as article 11 of the previous text (A/AC.254/4/Add.3/Rev.4) and was inserted as article 6, paragraph 3, in the restructured text (A/AC.254/4/Add.3/Rev.5). At the ninth session, there was general agreement to make this paragraph into a new article, 9 *bis*, and the text was agreed without modification.

[70] At the sixth session of the Ad Hoc Committee, consensus was reached on adopting the text drafted by an informal working group convened at the request of the Chairperson as the basis for further discussion of this article (A/AC.254/L.113). Discussions of this text continued until the adjournment of the session and proposals up to that point are reflected in the footnotes that follow.

[71] At the sixth session of the Ad Hoc Committee, several delegations suggested deleting the square brackets. One delegation suggested adding the words "to the extent possible" or "within available means".

[72] At the sixth session of the Ad Hoc Committee, one delegation suggested deleting the words "as appropriate".

[73] At the sixth session of the Ad Hoc Committee, several delegations suggested that the words "and combat" should be added in order to be consistent with subparagraph (a) of paragraph 1.

[74] At the sixth session of the Ad Hoc Committee, Switzerland suggested that this paragraph should also refer to protecting trafficked persons from revictimization in order to be consistent with subparagraphs (a) and (b) of paragraph 1. Switzerland also suggested expanding the title accordingly.

3. Policies, programmes and other measures taken in accordance with this article should include cooperation with non-governmental organizations, other relevant organizations[75] or other elements of civil society.

*Article 11*
*Cooperation with non-States Parties*

Option 1

States Parties are encouraged to[76] cooperate with non-States Parties to prevent and punish trafficking in persons and to protect and care for victims of such trafficking. To that end, the authorities of each State Party shall in appropriate cases[77] notify the authorities of a non-State Party whenever a victim of such trafficking who is a national of the non-State Party is in the territory of the State Party.

Option 2

This Protocol encourages States Parties to cooperate with non-States Parties on the basis of equality and reciprocity for the purpose of this Protocol.[78]

[*Article 12 was deleted*][79]

## IV. Final provisions

*Article 13*[80]
*Saving clause*

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law[81] and, in particular, where applicable, the 1951 Convention[82] and the 1967 Protocol[83] relating to the Status of Refugees.[84]

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[75] At the sixth session of the Ad Hoc Committee, several delegations expressed the view that the words "other relevant organizations" should be clarified.

[76] At the sixth session of the Ad Hoc Committee, there was general agreement to use the words "are encouraged to" instead of the word "shall".

[77] At the sixth session of the Ad Hoc Committee, there was general agreement to insert the words "in appropriate cases" after the word "shall".

[78] The text of this paragraph was proposed by China at the sixth session of the Ad Hoc Committee (A/AC.254/5/Add.13).

[79] At the sixth session of the Ad Hoc Committee, it was agreed to delete article 12 of the restructured text, entitled "Stricter measures".

[80] The text of this paragraph is based on article 5 of the draft Migrants Protocol.

[81] At the sixth session of the Ad Hoc Committee, a majority of delegations expressed the view that references to international humanitarian law and international human rights law were essential. Some delegations suggested deleting the text after the words "international law". Alternatively, one delegation suggested making a reference to international law and keeping the references to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. A majority of delegations opposed those proposals.

[82] United Nations, *Treaty Series*, vol. 189, No. 2545.

[83] Ibid., vol. 606, No. 8791.

[84] At the sixth session of the Ad Hoc Committee, some delegations proposed that a reference to bilateral and regional agreements should be added. A majority of delegations opposed that proposal.

2. The application and interpretation of measures pursuant to this Protocol must be consistent with internationally recognized principles of non-discrimination.[85]

*Article 14*
*Other provisions*

The provisions of articles [...] of the Convention shall also apply *mutatis mutandis* to this Protocol.

*Article 15*
*Settlement of disputes*[86]

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 16*
*Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done

[85] At the sixth session of the Ad Hoc Committee, an informal working group convened at the request of the Chairperson submitted the text of a non-discrimination clause (A/AC.254/L.112). It was agreed to adopt the text with amendments submitted by Germany (A/AC.254/L.116).

[86] The text of articles 15-20 is identical to the text of the corresponding provisions of the Convention and is reproduced here in accordance with a decision made by the Ad Hoc Committee at its sixth session (A/AC.254/23). Only necessary editorial changes have been made to the text. For issues related to these provisions, see the footnotes to articles 25, 26 and 27-30 of the draft Convention.

likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

*Article 17*
*Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

*Article 18*
*Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

*Article 19*
*Denunciation*

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

*Article 20*
*Depositary and languages*

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.